



INDIANA DEPARTMENT OF REVENUE
Sales Tax Clarification
January 2004

I. INTRODUCTION

Effective January 1, 2004, Indiana enacted legislation to bring Indiana's sales and use tax statutes into conformity with the Streamlined Sales and Use Tax Agreement.

II. STATUTORY CHANGES

P.L.257-2003 amended IC 6-2.5 concerning the definition of gross retail income. This definition includes delivery and installation charges in the definition of gross retail income. Also changed were definitions changing the definition of certain food items, and a definition to define durable medical equipment.

III. DELIVERY CHARGES

Delivery charges are now included in gross retail income and subject to tax regardless of shipping terms. Delivery that is made by or on behalf of the seller of property will continue to be taxable whether or not the delivery charge is separately stated.

IV. INSTALLATION CHARGES

If an item being sold is taxable, charges by the seller to install it are also taxable. Installation charges are taxable even if the installation charges are separately stated. Before January 1, 2004 separately stated installation charges were generally not taxable. Installation is a charge to add something new or different to an item. (Example: The fee for installing a trailer hitch to a vehicle that did not have a trailer hitch is taxable.) Installation charges to incorporate construction materials into real property are still exempt. Installation charges billed by a third party are also exempt. Installation charges for installing nontaxable items are exempt.

V. REPAIR CHARGES

Repair charges are charges to restore an item so that it can be used for its original purpose. Separately stated charges for repair services are not taxable. If a person takes his car to be repaired as the result of an accident, all materials (fenders, glass, paint, etc) are taxable, but the repair labor will be exempt if separately stated.

VI. REPLACEMENT CHARGES

Replacement charges are charges for replacing an item that is part of another item of tangible personal property. The costs to install replacement items are exempt if they are separately stated from the cost of the items.

VII. FOOD ITEMS

There are several items that were previously taxed that are no longer taxable items. Ice and bottled water are no longer taxable. Soft drinks are still taxable, but the taxability is based on whether the beverage contains natural or artificial sweeteners, not whether it is a carbonated beverage. A beverage that contains more than fifty percent (50%) vegetable or fruit juice by volume is exempt.

Candy is defined as preparations of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. If the item contains flour as one of the first three (3) ingredients listed on the label or is an item that requires refrigeration, it is not defined as candy.

Food items sold with eating utensils provided by the seller are taxable. Food shall be considered to be sold with eating utensils provided by the seller when the food is intended for consumption with the utensils provided.

Taxable food includes all food sold by an eating establishment that sells meals, sandwiches, or other food for consumption on or off the premises. Other taxable food includes self-service food such as salad bars or drink islands. All food items sold in a heated state are taxable.

Bakery items are not taxable unless they are sold through a vending machine, sold with eating utensils provided by the seller, or sold in a heated state.

VIII. DURABLE MEDICAL EQUIPMENT

IC 6-2.5-1-18 was added to the Indiana Code to define “Durable medical equipment”. It states: “Durable medical equipment” means equipment, including repair and replacement parts for the equipment, that:

- a. can withstand repeated use;
- b. is primarily and customarily used to serve a medical purpose;
- c. generally is not useful to a person in the absence of illness or injury; and
- d. is not worn in or on the body.

The term does not include mobility enhancing equipment.

Prior to January 1, 2004, a taxpayer could present a prescription to a hot tub dealer, and the dealer could sell the hot tub exempt from the sales tax. Another situation would have been for a dermatologist to prescribe a tanning bed for an individual. The individual could then purchase the tanning bed exempt from the sales tax.

After January 1, 2004, recreational hot tubs and tanning beds will no longer be exempt from sales tax. The reason for the elimination of any exemption is contained in subdivision (b) and (c) of the above definition. A recreational hot tub or tanning bed is not primarily and customarily used to serve a medical purpose. Subdivision (c) of the definition requires that the equipment is generally not useful to a person in the absence of an illness or injury. A recreational hot tub or tanning bed has considerable use to people without an illness or an injury.

NOTE: For a more thorough explanation of the Streamlined Sales Tax provisions, see Commissioner’s Directive #21. For more detail concerning the taxability of food items and a list of taxable and exempt items, see Sales Tax Information Bulletin #29, available through our website at: www.IN.gov/dor/publications. In addition, for more detailed information regarding installation and delivery charges, please see Commissioner’s Directive #22.